IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6154 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK KUMAR, IFS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6154 of 2001
MR MUKUL SINHA for Petitioner No. 1
MR ND GOHIL AGP for Respondent No. 1-3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This Petition under Article 227 of the Constitution has been directed against the judgment and order of the Central Administrative Tribunal, Ahmedabad Bench dated 3-5-2001.

#. The petitioner is an Officer in the cadre of Indian Forest Service (IFS). His case before the Central Administrative Tribunal was that on the basis of the recommendations of the Departmental Promotion Committee (for short `the DPC') which is said to have met on 30-8-2000, he was entitled to be appointed to the post of Principal Chief Conservator of Forests (for short `P.C.C.F'). This fact has not been disputed and, in fact, accepted in the affidavit-in-reply filed before us in this case that in the meeting of the DPC held on 30-8-2000 the petitioner was found fit to be promoted to the post of P.C.C.F. The petitioner was, however, not promoted at the relevant time and Dr. D.P.S. Verma (respondent No.2 herein) who was substantially holding the post of Managing Director, GSFDC was given additional charge of the post of P.C.C.F. The petitioner, thus, was denied opportunity of promotion to the post of P.C.C.F. Dr. D.P.S. Verma retired on 31-7-2001. The D.P.C. was reconstituted and it met on 31-7-2001 itself. While the meeting of the D.P.C. was in progress, at about 2.30 in the noon, the petitioner was served with a charge sheet containing allegation that while acting as a Disciplinary Authority against one subordinate employee on charge against him of non payment of leave salary of one beat guard, the petitioner dealt with the matter very leniently and imposed only a minor punishment on the delinquent employee. The charge sheet was concerning the conduct of the petitioner as Disciplinary Authority in accordance with the Disciplinary Rules and for the act that was committed some time in the year 1994.

#. According to the petitioner, just at the time when his turn for promotion to the post of PCCF had come and he was waiting for the promotion to the said post on the basis of recommendation of the D.P.C., only to deprive him of his chance, charge sheet was served on him on a frivolous charge. This was done, according to him, only to supercede his legitimate claim and to see that before his retirement which is due in September 2001, he does not get promotion to the post of PCCF. As stated above, Dr. D.P.S. Verma has also retired on 31-7-2001. Instead of appointing the petitioner on the said post of PCCF based on the recommendations of the D.P.C. of the year 2000, Dr. S.A. Chavan (respondent no.3 herein), who is junior to the petitioner, has been appointed to

the post of PCCF and the petitioner has been denied promotion only on the ground that a charge sheet has been issued against him.

#. Learned Members of the Central Administrative Tribunal have duly taken note of this fact in their judgment and order dated 3-5-2001 which is under challenge in this Writ Petition that the petitioner was recommended by the D.P.C. in its proceedings held on 30-8-2000 and the select list is operative for a period of one year. The claim of the petitioner for direction for appointment to the post of PCCF has been rejected by accepting the stand taken on behalf of the State that "the State Government cannot be compelled to fill up the vacancies in that post (Managing Director, GSFDC or PCCF) or to operate that post". The Tribunal also held that the State Government is bound by the provisions of Rule 10 and 11 of the Indian Forest Service (Cadre) Rules, 1966, which require that no cadre post can be kept vacant or kept in abeyance for a period exceeding six months without approval of the Central Government. Having taken notice of this legal position, the Tribunal merely expressed a hope that the State Government shall abide by the provisions of the Rules.

#. Learned counsel Mr. Mukul Sinha appearing for the petitioner submits that admittedly the name of the petitioner was on the select list prepared by the D.P.C. in its proceedings held in August 2000. The select list is in operation for a period of one year. The post of P.C.C.F. fell vacant on 1-9-2000, on superannuation of the then incumbent Shri A.P. Mishra. At that point of time, the second seniormost Officer in the Department, namely, Dr. D.P.S. Verma, who was already promoted on a regular basis as P.C.C.F. with effect from 16-11-1997 was holding substantially the post of Managing Director, GSFDC. On the retirement of Shri A.P. Mishra, the post of P.C.C.F. which had fallen vacant should have been filled up by appointment of the petitioner, whose name was in the select list. Instead, Dr. D.P.S. Verma, who was holding the post of Managing Director, GSFDC, an ex-cadre post, was given additional charge of the cadre post of P.C.C.F. This was done deliberately to deprive the petitioner of his legitimate chance of promotion to the post of P.C.C.F. Dr. D.P.S. Verma has retired on 31-7-2001 and even thereafter the petitioner was not given promotion on the basis of his position in the select list and a Junior Officer Dr. S.A. Chavan (respondent no.3 herein) has been promoted as P.C.C.F. On a frivolous ground that the petitioner has been served with a charge sheet on allegation of imposing a minor

punishment on a subordinate employee while discharging his duties as a Disciplinary Authority in departmental enquiry, chance of promotion and posting has been denied to the petitioner.

#. Learned counsel for the petitioner relies on Purshottam v. Chairman, M.S.E.B. and Another (1999) 6 SCC 49 in support of his contention that where a duly selected person is deliberately denied appointment, this Court can grant extraordinary relief of issuing direction that the select list be operated and the person on the basis of his position in the select list be given posting and order of appointment.

#. We have heard learned counsel Shri N.D. Gohil appearing for the State, who read the reply affidavit and tried to support the decision taken by the Tribunal.

#. After hearing the learned counsel appearing for the parties, we are of the opinion that this is a gross case of injustice. The petitioner has deliberately been denied his due chance of promotion and appointment, although his name continues to be shown in the select list prepared by the D.P.C. At the time when Shri A.P. Mishra the then incumbent in the post of P.C.C.F. retired and Dr. D.P.S. Verma, who is senior to the petitioner, was regularly promoted to the post of P.C.C.F., the post of Managing Director, GSFDC could have been made available to the petitioner on the basis of his seniority position and inclusion in the select list. But Dr. D.P.S. Verma was given promotion to the post of P.C.C.F, and was allowed to hold additional charge of the post of Managing Director, GSFDC. In fact, he was substantively holding charge of Managing Director, GSFDC. After retirement of D.P.S. Verma on 31-7-2001, it appears that it was difficult to deny the chance of promotion to the petitioner, but only in order to scuttle the chance of promotion of petitioner, at a time when his case was being considered by the D.P.C in its meeting on 31-7-2001, at 2.30 in the noon hurriedly charge sheet was served on the petitioner in relation to an alleged misconduct in imposing minor punishment in a disciplinary proceeding against a subordinate employee. The charge sheet is not under challenge either before us or before the Tribunal. But from the contents of the articles of charge and the statement of imputation contained therein, it is obvious to us that for some act done by the petitioner seven years back in discharge of his statutory duties as Disciplinary Authority, charge sheet has been issued to the petitioner on the ground that he should not have imposed a minor punishment on the subordinate

employee. Whether the allegation contained in charge sheet amounts to a `misconduct' is a matter which can independently be dealt with, but, from the resume of facts stated above, we do not find that there is any Rule or any instruction which can deprive the petitioner of his chance of promotion, only because the charge sheet has been issued to him. Learned counsel pointed out that the petitioner is due for retirement in September 2001 and this entire exercise and manipulation was done, unfortunately, at the highest level in the Department, only to deprive the petitioner of his due chance of promotion. To deprecate this action and grant necessary relief to the petitioner so that before his retirement the petitioner is given his legitimate position as also the monetary benefit attached to the said post, we are persuaded to adopt the course in granting the relief, as was done in the case of Purshottam's case (supra) by the Supreme Court reported in (1999) 6 SCC 49.

#. As a result of the discussion aforesaid, this Petition succeeds. The impugned order of the Central Administrative Tribunal, Ahmedabad Bench dated 3-5-2001 is hereby quashed. The select list is operative in which the petitioner's name figures. As per his seniority position, he is placed above respondent no.3 - Mr. S.A. Chavan. We, therefore, direct respondent no.1 to issue an order of appointment in favour of the petitioner and promote him to the post of Principal Chief Conservator of Forests, well before the petitioner is superannuated. All consequential monetary benefits attached to the said post on the issuance of order of promotion shall also be granted to the petitioner. Rule is made absolute accordingly.

In the circumstances, the petitioner is also entitled to costs of this Petition which is assessed at Rs. 5000/-.

After pronouncement of the judgment and order, learned Asst. Government Pleader made a request that the judgment and order be kept in abeyance for some period for preferring an Appeal. Since the petitioner is on the verge of retirement and as held above that he has been deliberately kept out of his due position, we find no ground to grant any stay of our order. The prayer is accordingly rejected.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J)

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